IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.1719 OF 1995

The Municipal Corporation of Greater Bombay a Statutory Authority constituted under the provisions of the Bombay Municipal Corporation Act .. Petitioner

Versus

1) Khanderao Tukaram Gole since deceased through his heirs

1A) Smt.Suman K. Gole
1B) Rajesh K. Gole
1C) Ms.Chhaya K. Gole
1D) Ms.Vandana K. Gole
1E) Pramod K. Gole
all residing at Muktabai Temple Dhobighat, Road No.31, 3/7 Chunabhatti, Sion, MUmbai 400 022.

2) N.P. Murgali
Judge, First Labour Court
Tardeo, Bombay.

3) B.S. Bhadange
Member, Industrial Court
Tardeo, Bombay. .. Respondents

Mr.Harinder Toor with Mrs.R.N. Vora i/b.M/s.Crawford Bayley & Co. for the Petitioner.

Mr.T.R. Yadav for Respondent Nos.1A to 1E.

Respondent Nos.2 and 3 formal parties.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 19TH AUGUST 2006

ORAL JUDGMENT :

. This Petition challenges the order dated 21st February 1991 passed by the Judge, First Labour Court,

Bombay in Application (BIR)(REIN) No.939 of 1986 and the order dated 21st November 1994 passed by the Member, Industrial Court, Bombay in Appeal (IC) No.4 of 1991.

2. Respondent No.1 workman was employed as a Conductor with the Petitioner. He joined service on 5th January 1971. It appears that on 19th September 1984, there was a scuffle between him and the driver. The allegation against the workman is that he hit the driver with the ticket box causing injuries to the driver who was then treated in Rajawadi Hospital. No criminal complaint was lodged by either the driver or the Petitioner. The workman was charge sheeted for the alleged act of misconduct and the Trying Officer held that the workman was guilty of the assault. After the order of the Trying Officer, departmental appeal was filed by the workman. This appeal was rejected and the workman was dismissed from service on 11th March 1985.

3. The workman challenged his dismissal from service by filing an application in the Labour Court being Application (BIR) No.939 of 1986. The Labour Court came to the conclusion that the findings of the Inquiry Officer were not perverse. However, he was of the view that the order of dismissal was shockingly disproportionate to the charges proved against the workman. The Labour Court, therefore, granted

reinstatement with 50% of the back wages and continuity of service. The Labour Court came to the conclusion that though there was a scuffle between the workman and the driver, the injury on the driver was not proved since no medical certificate had been produced. The Labour Court, after considering various judgments, was of the opinion that the punishment imposed on the delinquent workman must be commensurate with the misconduct and, therefore, granted reinstatement with 50% back wages.

4. The Petitioner preferred an Appeal being Appeal (IC) No.4 of 1991 which was dismissed by the Industrial Court on 21st November 1994. The order of the Labour Court was thus confirmed.

5. This Court whiling issuing Rule on 5th September 1995, passed the following order :-

> " Hd. Both sides. Rule restricted on the issue of Backwages. Interim stay of Backwages Awarded on condition that if the Petitioner fails in this W.P., interest at 12% per annum shall become payable on the backwages due to the IR."

6. The learned Advocate appearing for the

Petitioner contends that despite the aforesaid order having been passed while admitting the Petition, he should be permitted to argue on the question of punishment as well i.e. he should be permitted to challenge the orders impugned entirely. The learned Advocate submits that the aforesaid order was passed when the Petition was admitted, at a prima facie stage and, therefore, he should be permitted to challenge the two orders with respect to the findings regarding punishment. In my view, this is wholly impermissible since the Rule which has been issued by this Court, after consideration of the challenge in the Petition, has been restricted only to the consideration of back wages. It obviously means that the Court did not deem it necessary to interfere with any other findings of the Labour Court and the Industrial Court. In such circumstances, it would be impermissible to allow the Petitioner now to argue the entire matter.

7. As regards the issue of back wages, the learned Advocate for the Petitioner submits that the misconduct on the part of the workman is grave and an assault on a co-worker leads to demoralisation of the workforce. He submits that it would also lead to the demeaning of the public image of a public undertaking such as the Petitioner. He next submits that industrial discipline

is an indispensable necessity and, therefore, the Labour Court ought not to have decided to award 50% of the back wages merely on the basis of compassion. He points out that the trend of the judgments today is that compassion is not a consideration while dealing with matters in respect of misconduct. He then points out that the past service record of the workman was not good and that it has not been considered by the Labour Court or the appeal Court while disposing of the application and the appeal respectively. He points out that the workman had been censured on two occasions and had been suspended on a few occasions. This service record is not one which would permit any Presiding Officer to grant the relief of reinstatement with 50% back wages, according to the learned Advocate. It was also pointed out that the Statement of Claim did not contain any averment that the workman was not gainfully employed after dismissal from service. He relies on the judgments in the case of *Murtadih Colliery of Bharat Coking Coal Ltd.* vs. *Bihar Colliery Kamgar Union through workmen*, **(2005) 3 SCC 331**, *M.P. Electricity Board* vs. *Jagdish Chandra Sharma*, **(2005) 3 SCC 401**, *Hombe Gowda Educational Trust and another* vs. *State of Karnataka and others*, **(2006) 1 SCC 430** and *U.P. State Brassware Corpn. Ltd. and another* vs. *Uday Narain Pandey*, **(2006) 1 SCC 479** in support of his aforesaid submissions.

8. The learned Advocate appearing for the workman, on the other hand, submits that the workman has died on 18th December 1999 during the pendency of the Petition and his heirs have been brought on record. He points out that the Labour Court has considered the fact that the injuries have not been proved and, therefore, the misconduct was not as serious as made out by the Petitioner. The learned Advocate further points out that the Labour Court after considering the entirety of the matter has found that there was a scuffle between the workman and the driver, but it was not so serious as to warrant the punishment of dismissal. The Labour Court has, therefore, granted reinstatement. However, in view of the fact that there was a scuffle at the work place, the Labour Court has not awarded full back wages and has granted only 50% of the back wages. He submits that no interference is called for in writ jurisdiction of this Court.

9. The Labour Court, in the present case, has found that the punishment which ought to be imposed on the workman for having been part of a scuffle with the driver, in the presence of the public and at the work place, is denial of 50% of back wages. The Labour Court has found that this punishment would be commensurate with the alleged act of misconduct, especially since the injuries to the driver have not been proved. While

restricting the Rule, this Court has directed that the only issue to be considered at the final hearing would be regarding payment of back wages. The judgments relied on by the learned Advocate for the Petitioner are mainly dealing with what should be the punishment which should be imposed on an employee who assaults either his superiors or his co-workers. The judgment in the case of *Hombe Gowda Educational Trust* (supra), which was in respect of an educational institution, has, after considering the other judgments cited by the learned Advocate for the Petitioner in the present case, held thus :-

> "30. This Court has come a long way from its earlier viewpoints. The recent trend in the decisions of this Court seek to strike a balance between the earlier approach to the industrial relation wherein only the interest of the workmen was sought to be protected with the avowed object of fast industrial growth of the country. In several decisions of this Court it has been noticed how discipline at the workplace/industrial undertakings received a setback. In view of the change in economic policy of the country, it may not now be proper to allow the employees to break the discipline with impunity. Our country is governed by rule of law. All actions, therefore, must be taken in accordance with law. Law declared by this Court in terms of Article 141 of the Constitution, as noticed in the decisions noticed supra, categorically demonstrates that the Tribunal would not normally interfere with the quantum of punishment imposed by the employers unless an appropriate case is made out therefor. The Tribunal being inferior to this Court was bound to follow the decisions of this Court which are applicable to the facts of the present case in question. The Tribunal can

> neither ignore the ratio laid down by this Court nor refuse to follow the same."

10. In my opinion, the Labour Court while dealing with the present case, has considered all the facts and has arrived at a possible conclusion in exercise of its powers under Section 11A of the Industrial Disputes Act, 1947. It has held that the punishment is shockingly disproportionate and has, therefore, denied 50% of the back wages. Denial of 50% of back wages seems to be the adequate punishment which the Labour Court has considered and there is no need to interfere with the same in the writ jurisdiction of this Court. Although it may be possible that the past service record of the workman was not good, it does not appear that the Petitioner had ever argued this issue before either the Labour Court or the Industrial Court. In such circumstances, in my opinion, there is no need to interfere with the findings of the Labour Court and the Industrial Court in respect of back wages. The orders of both the Courts below do not contain any jurisdictional error nor are they perverse, requiring interference under the writ jurisdiction of this Court.

11. Petition dismissed.

12. While issuing Rule, this Court had directed that in the event the Petitioner failed in the Petition, it

would pay back wages with 12% interest per annum, accordingly, the Petitioner is directed to pay 50% of the back wages together with 12% interest.

13. Application for stay of this order for a period of four weeks refused.